

FCC MAIL SECTION

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-301

In re Applications of

Charles A. Farmer File No. BPH-920518MA
(hereafter "Farmer")

Richard M. Schafbuch File No. BPH-920521MI
(hereafter "Schafbuch")

For Construction Permit
for a New FM Station on Channel 280C3
in Ilwaco, Washington

HEARING DESIGNATION ORDER

Adopted: November 17, 1993; Released: December 14, 1993

By the Chief, Audio Services Division

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Farmer owns 100% of the common voting stock of Lower Columbia Broadcasting Company, Inc., licensee of station KKEE(FM), Longbeach, Washington. Farmer has indicated his intent to terminate his relationship with station KKEE(FM) in the event of grant of his application. Farmer will be required to sever all connections with station KVEE(FM), prior to the commencement of program test authority.

3. Farmer submitted amendments on July 27, 1992 and September 14, 1992. Both of these amendments were signed by counsel for Farmer, and not by Farmer himself, as required by 47 C.F.R. § 73.3513. Accordingly, these amendment are unacceptable for filing and will be returned.

4. In Section III, Financial Qualifications, of FCC Form 301, Schafbuch identifies the entity for his source of funds, but fails to identify the contact person at the U.S. Bank of Oregon. Accordingly, Schafbuch will be required to file an amendment which gives this required information to the presiding Administrative Law Judge within 30 days of the release of this Order, or an appropriate issue will be specified.

5. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications would be granted, if any.

8. IT IS FURTHER ORDERED, That, in the event of grant of Farmer's application, he will be ordered to divest himself of all interest in and sever all connections with station KKEE(FM), Longbeach, Washington, prior to the commencement of program test authority.

9. IT IS FURTHER ORDERED, That the July 27, 1992 and September 14, 1992 amendments filed by Farmer ARE HEREBY RETRUNED.

10. IT IS FURTHER ORDERED, That Richard M. Schafbuch shall submit the amendment specified in paragraph 4 hereinabove to the presiding Administrative Law Judge within 30 days of the release of this Order.

11. IT IS FURTHER ORDERED, that a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record. Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commissions, 2025 M Street, N.W., Suite 7212 Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.1221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c)(1) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in (a) the Standard Document Production Order (See Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute resulting in dismissal of the application. See generally *Proposals to Reform the Com-*

mission's Comparative Hearing Process (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *on reconsideration*, 6 FCC Rcd 3403, 3404 paras. & n.3, Appendix paras. 3 & 5, (released May 15, 1991).

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau